

### **REMARKS**

Claims 1-20, 22-31 and 38-95 are currently pending. No new matter has been added.

#### **Obviousness-type Double Patenting:**

Claims 1-20, 22-31 and 38-95 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of copending applications:

- (1) 11/068,134 (US 20050147564);
- (2) 11/730,796 (US 20050058606);
- (3) 10/392,558 (US 20040019073);
- (4) 11/267,354 (US 20060057074); and
- (5) 11/006,940 (US 20050148562).

According to MPEP 804(I)(B)(1), "if a provisional nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer."

All of the above-listed copending applications were filed after the earliest effective filing date of the present application and qualify as "later-filed" applications. Furthermore, the double patenting rejections are the only remaining rejections in this application. Thus, according to the MPEP provision above, terminal disclaimers are not necessary for allowance of the present claims. Applicants believe that the double-patenting rejections are rendered moot and withdrawal of the same is respectfully requested.

In view of the above remarks, applicants respectfully submit that this application is now in condition for allowance and earnestly request such action.

If any points remain at issue which can best be resolved by way of a telephonic or personal interview, the Examiner is kindly requested to contact the undersigned attorney at the telephone number listed below.

Appl. No. 10/735,959  
Reply dated August 15, 2007  
Reply to Office Action of May 15, 2007

Respectfully submitted,

/wendy petka/

Wendy Petka  
Attorney for Applicants  
Reg. No. 53,459

Patent Department  
Boehringer Ingelheim Corp.  
900 Ridgebury Road  
P.O. Box 368  
Ridgefield, CT 06877  
Tel.: (203) 798-6614  
Fax: (203) 798-4408